No. 15-674

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA, *et al.*,

Petitioners,

v.

STATE OF TEXAS, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR AMICI CURIAE THE MAYORS OF NEW YORK, LOS ANGELES, ATLANTA, EIGHTY-ONE ADDITIONAL MAYORS, COUNTY EXECUTIVES, AND LOCALITIES, THE UNITED STATES CONFERENCE OF MAYORS, AND THE NATIONAL LEAGUE OF CITIES IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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INTEREST OF AMICI CURIAE[1]

Amici signatories to this brief represent a broad coalition of local governments across the nation—from the largest cities in the United States to small towns throughout the country.[2] More than 1.25 million children and parents potentially eligible for relief under the enjoined executive guidance, representing over 30 percent of the undocumented immigrants so eligible, reside in amici's towns and cities. Amici submit this brief to explain the compelling need for this Court to grant review. The nationwide injunction entered by a single federal district court and upheld by two circuit judges is unprecedented and sweeping in scope: it has profound daily impact on the lives, safety, and integrity of millions of families and children, and imposes daily harm on all of our residents.

Amici mayors, county officials, local governments, and their city councils confront a reality that no injunction or lawsuit can erase. The

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[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici or their counsel made a monetary contribution to this brief's preparation or submission. All counsel of record provided blanket consent for the filing of amicus briefs or received timely notice and consented to the filing of this brief.

[2] The signature pages to this brief contain a list of all amici.

parents and children directly harmed by the injunction in this case are longstanding members of our communities and are also members of families that include millions of citizen children. The challenged executive guidance responds to those realities in two main ways. The guidance establishes a process for eligible parents and children to apply for discretionary deferred action relief, providing key assurance that families will not be split apart by deportation during the periods covered by the guidance. Also, by expanding access to deferred action relief, the guidance opens a path to work authorization and basic economic security for qualifying individuals. The nationwide injunction impairs the humanitarian aims of the guidance, harming our communities as a whole.

Keeping families together is of enormous importance to our residents. The threat of separating even one parent from a child imposes substantial harm, as does the inability of a parent to work lawfully to support his or her family. The impact is greater when magnified across local communities nationwide. Just last year, many of the respondent states emphasized to this Court the importance of stable marriages and strong parental support to successfully raise children.[3] The same

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[3] *See Obergefell v. Hodges*, Nos. 14-556, 14-562, 14-571, 14-574, Brief of Louisiana, *et al.*, as Amici Curiae Supporting Respondents, at 11-12.

interests those states espoused then confirm the urgent need for this Court to review the challenged injunction now. The harm to children, millions of whom are U.S. citizens, and the ripple effects across their home communities, do not depend on the reason why children are threatened with deprivation of parental care and support.

Likewise, amici know from running local governments that the safety and welfare of all residents are interconnected. The enjoined guidance was issued to encourage undocumented residents who are longstanding and law-abiding members of our communities to come out of the shadows, be counted, and more fully participate in civic and economic life. Amici local governments cannot act in the best interest of all residents if some live in fear, distrustful of government and isolated from their communities.

Immigration status has little or no bearing on many of the issues most important to our residents' daily lives, and for which local governments bear primary responsibility. Preventing crime, for example, is a compelling interest that unites all residents. Yet undocumented immigrants are often understandably reluctant to cooperate with local law enforcement. All residents suffer as a result. Crimes go unreported and unsolved on a daily basis because undocumented immigrants fear interacting with law enforcement. For the victims of those crimes, as well as the victims' loved ones and

neighbors, delay in implementing the enjoined guidance has irreparable consequences.

Likewise, the contribution of all residents is essential for the economic stability and growth of amici's cities and towns. Many amici are still struggling to recover from the lingering economic recession. Implementing the enjoined guidance will increase municipalities' economic activity and tax base by hundreds of millions of dollars. Harris County, Texas—home of Houston—could alone collect more than $400 million in additional personal, business, and sales taxes over the life of the guidance due to the wage growth of currently undocumented immigrants who would qualify for deferred action.[4] Loss of economic growth on this scale has immense, immediate impact on residents of amici cities and towns.

Finally, amici local governments have a further compelling interest in immediate review of the standing question raised by the petition because the lower courts' rulings raise a harmful prospect that extends far beyond the present case and controversy. The lower courts' decisions block

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[4] Raul Hinojosa-Ojeda, North American Integration and Development Center, UCLA, *The Economic Benefits of Expanding the Dream: DAPA and DACA Impacts on the State of Texas and Harris, Tarrant, and Dallas Counties* 4 (Feb. 2, 2015), *available at* http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/tx_draft_final_v2.pdf.

implementation of the guidance across all jurisdictions nationally, when only a single plaintiff state purportedly demonstrated harm, and this is not a nationwide class action.

Those rulings are a formula for vast disruption not only of the guidance here, but also of future federal initiatives and related local programs in other areas. Without receiving evidence from numerous affected jurisdictions that support the guidance, the lower courts approved an injunction that imposed substantial harm on the residents of absent jurisdictions. This Court should grant review to clarify for this and future cases whether and when such nationwide injunctions may be appropriately entered.

ARGUMENT

THERE IS PRESSING NEED FOR IMMEDIATE REVIEW BY THIS COURT

Amici local governments submit this brief to support petitioners' argument that immediate review by this Court is warranted (Petition at 32-35). The effect of the preliminary injunction here is unprecedented and sweeping in scope. About 4 million individuals are potentially affected—even more if family members, neighbors, colleagues, and classmates in local communities are counted. More than 1.25 million of those directly affected live in amici's jurisdictions. Amici local governments confront and address the needs of their residents

every day and have firsthand experience with the harmful impact of delaying review of the injunction.

As this brief explains, any delay in review impairs the stability of millions of families, impedes law enforcement on a daily and recurring basis, and deprives local communities of significant economic benefits. None of these consequences can be isolated; they apply to all of amici's residents without regard to citizenship or immigration status.

Immediate review is also critical to clarify when plaintiffs have standing to obtain nationwide injunctions—a question that is important to local governments not only for the purpose of this case but also for understanding how to proceed when future federal guidance or initiatives may be threatened with similar orders.

I. Immediate Review Is Necessary to Protect the Integrity of Millions of Families

The enjoined guidance specifically targets children and parents—undocumented immigrants with family connections to the United States and their local communities. Few principles are as deeply embedded in the nation's history and tradition as the importance of family. *See, e.g.*, *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977) ("Our decisions establish that the

Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition."); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (noting that "[t]he Court has frequently emphasized the importance of the family"). The integrity of family is a shared goal regardless of partisan political position, and a goal that many of respondent states have confirmed is critical to collective social welfare.[5]

Communities are harmed when deportation and the threat of deportation ruptures family unity and impairs stable home lives for children. The splitting of families through deportation results in direct financial costs for communities. Children in single-parent households are over four times more likely to live in poverty than are children with married parents,[6] and households that lose the family

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[5] *See, e.g., United States v. Windsor*, No. 12-307, Brief Addressing the Merits of the State of Indiana and 16 Other States As Amici Curiae in Support of Respondent The Bipartisan Legal Advisory Group of the U.S. House of Representatives, at 16-17 (arguing that "children and society at large" benefit when both biological parents are able to "nurture and raise the children they beget").

[6] Joanna Dreby, Center for American Progress, *How Today's Immigration Enforcement Policies Impact Children, Families, and Communities* 9 (August 2012), *available at* http://cdn.americanprogress.org/wp-content/uploads/2012/08/DrebyImmigrationFamiliesFINAL.pdf.

breadwinner due to immigration enforcement experience "steep declines" in income, housing instability, and food shortages, resulting in increased reliance on public benefits.[7] Deportations that split up families also strain already overburdened social service networks. One study estimates that in 2011 alone, there were 5,100 children in foster care nationwide whose parents had been either detained or deported,[8] stretching the resources of local governments and separating children from parents capable and willing to provide care.

Moreover, a formalized deferred action process has enormous benefits for our undocumented residents, even in cases where deportation is already unlikely. In fact, it is in those very cases that the challenged guidance has the most positive impact for our communities. The immigration

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[7] Ajay Chaudry, *et al.*, Urban Institute, *Facing Our Future: Children in the Aftermath of Immigration Enforcement* viii-ix (February 2010), *available at* http://www.urban.org/uploadedpdf/412020_FacingOurFuture_final.pdf (examining consequences of parental arrest, detention, and deportation on 190 children in 85 families in six locations in the U.S.).

[8] Seth Freed Wessler, Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* 6 (November 2011), *available at* http://www.atlanticphilanthropies.org/sites/default/files/uploads/ARC_Report_Shattered_Families_FULL_REPORT_Nov2011Release.pdf.

status of a parent or child does not tell the full story about a family, nor does it define the scope and strength of family bonds: it is estimated that more than 9 million people in the United States live in mixed status families with at least one unauthorized immigrant.[9] Parents may lack documentation, but their children or partners are often legal residents or citizens. The same is true for long-term child residents: their siblings and other members of the household may be legal residents as well.

Because the consequences of deportation are so drastic, millions of families in mixed-status households live under an ongoing fear of deportation and separation from their loved ones. The threat of deportation prevents affected families in our towns and cities from planning for the future—even from counting on basic measures of security, like the ability to keep the family intact and to work legally to support the household. Lack of documentation for one family member can have cascading consequences for the entire family—for instance, when an undocumented parent fears taking a child to obtain needed medical treatment or when a family fails to seek housing or other

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[9] Paul Taylor, *et al.*, Pew Research Center, *Unauthorized Immigrants: Length of Residency, Patterns of Parenthood* (Dec. 1, 2011), *available at* http://www.pewhispanic.org/2011/12/01/unauthorized-immigrants-length-of-residency-patterns-of-parenthood.

benefits for fear of disclosing the immigration status of undocumented family members.

For decades, a vast array of government programs on the federal, state, and local levels have worked to alleviate the public harms from unstable and financially impoverished families. Those injuries are not reduced one iota because their cause is lack of documentation for one family member, rather than other economic or social circumstances.

The challenged guidance recognizes all of these realities by implementing a process to provide targeted deferred action relief. In formulating the guidance, the federal government has appropriately decided that preserving family unity and promoting family welfare should weigh heavily in decisions about how to allocate enforcement resources. The government has thus recognized and reasonably determined that the undocumented parents and long-term child residents who would be eligible for deferred action under the guidance are unlikely to be deported. Making this reality concrete for families through an application process that allows for case-by-case review *before* immigration status is challenged or becomes a potential legal problem is critical for family security and stability.

By providing a process for individuals to apply and qualify for deferred action relief and obtain work authorization, the guidance allows families with undocumented members to take basic steps

vital for their future and the future of the communities they live in. Those steps range from enabling parents to care for their children by living in the same household, to parents and other family members being able to work lawfully and provide economic security for the family as a whole.

The Court's immediate review is crucial because delayed implementation of the guidance harms families. Every day that a family's stability is impaired can impose lasting injury on its children. Children who lack secure families and parental care lose crucial momentum during the most critical period of their life. For instance, interviews with a sample of children who had experienced separation from a parent within the last six months due to immigration detention found that the vast majority had trouble eating and sleeping, more than 40 percent were "anxious" or "withdrawn," and only slightly fewer were "angry or aggressive."[10] The same study also reported instances where families were afraid to return their children to school after the arrest of one parent on immigration-related charges. Older students also dropped out of school to help support the household and take care of younger children after one parent

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[10] Chaudry, *supra* note 7, at 41-42; *see also id.* at 41-53 (detailing short-term and long-term behavior changes among children who experienced separation from parents due to immigration enforcement).

was sent to immigration detention.[11] These educational, psychological, and social repercussions will endure even when the children become adult members of their communities.

By establishing a process for temporary relief from deportation for both children and parents, the executive guidance in this case aims to protect families. Withdrawing that protection imposes an immediate and irreparable toll on both families and the wider communities in which they reside.[12]

II. Immediate Review Will Avoid Harms to Law Enforcement and Public Safety Efforts

The Court's review is also urgently needed because of the nationwide injunction's daily impact on local law enforcement and public safety efforts. In most areas of the nation, local governments are responsible for police protection and public safety.

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[11] *Id.* at 49-50.

[12] *See* Joanna Dreby, Center for American Progress, *Executive Action on Immigration Will Help Children and Families* (March 3, 2015), *available at* https://www.americanprogress.org/issues/immigration/news/2015/03/03/107769/executive-action-on-immigration-will-help-children-and-families/?elqTrackId=1728770977694509a243555a81ef9d2e&elqaid=24822&elqat=1 (emphasizing the toll that immigration system has on American families and the potential for improvement due to the executive guidance).

For purposes of preventing and investigating crime, the immigration status of witnesses and victims has little if any relevance. Instead, local police departments rely on the trust and cooperation of all residents, including members of immigrant communities, to ensure public safety.

But, as local leaders are keenly aware—and as police chiefs, sheriffs, and other law enforcement officials have emphasized to this Court[13]—undocumented immigrants and their families often fear interactions with law enforcement because of concerns that officers will inquire into their immigration status or the status of a family member or friend, resulting in potentially harmful exposure of undocumented status.

Because millions of our residents live in mixed-status families, millions are potentially inhibited from cooperating with police and law enforcement out of fears of having a loved one deported or subject to adverse immigration action. As a result, any delay in the implementation of the guidance directly impairs the ability of local law enforcement to protect our communities because a significant segment of our communities fears contacting and working with police.

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[13] *See* Amicus Curiae Brief of Major Cities Chiefs Association, Police Executive Research Forum, and Individual Sheriffs and Police Chiefs in Support of Petitioners 7-11 (No. 15-674).

The harm resulting from distrust of police is immediate, and accrues every day. As the president of the Major Cities Chiefs Association testified in front of the Senate Judiciary Committee earlier this year: "When immigrants come to view their local police and sheriffs with distrust because they fear deportation, it creates conditions that encourage criminals to prey upon victims and witnesses alike."[14]

While the guidance will not eliminate all concerns about cooperating with law enforcement, by extending deferred action to a larger number of otherwise law-abiding immigrants, the guidance will increase trust and reduce fear about engaging with police officers and other government officials. To enhance amici's goal of improving public safety for the entire community, encouraging initial cooperation is a first and necessary step in the right direction.

Police cannot respond to unreported crimes, nor arrest suspects if witnesses and victims are afraid

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[14] *Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims*, Before the S. Comm. on the Judiciary, 114th Cong. 2 (July 21, 2015) (statement of Tom Manger, Major Cities Chiefs Association), *available at* https://www.majorcitieschiefs.com/pdf/news/manger_judiciary_testimony_july_2015_final.pdf.

to come forward. If communities must continue to bear these public safety costs, that should result from a decision by this Court rather than from a nationwide preliminary injunction issued by a single district court and affirmed by a divided court of appeals.

III. Immediate Review Is Critical Because of the Economic Costs of the Preliminary Injunction for Local Governments Nationwide

This case also warrants immediate review because of the economic costs imposed by the preliminary injunction. Many amici, like other local governments nationwide, are still struggling to recover from the economic downturn, which left many of our residents unemployed, local businesses struggling, and local tax bases depleted even as the need for public services increased. For current economic recovery and future growth, amici can ill afford to have substantial numbers of residents and households isolated from the workforce and not fully contributing to local economies.

Cities and counties forgo substantial economic gains when undocumented immigrants with family ties and connections to our communities cannot enter the workforce lawfully. By allowing a greater number of qualifying undocumented workers to obtain authorization to work, the guidance furthers the significant and immediate economic interest of

all of amici's residents. The preliminary injunction forestalls those gains, day upon day.

Nationwide, it is estimated that the deferred-action programs outlined in both the 2012 executive action and in the 2014 guidance challenged here would increase state and local tax contributions by $845 million per year.[15]

These economic benefits can be quantified locally as well: In Los Angeles County, for instance, where more than 450,000 undocumented immigrants could be eligible for deferred action under the guidance, expanded DACA- and DAPA-eligible workers could see wages grow by a combined $1.6 billion over the life of the guidance, leading to an estimated $1.1 billion in new tax revenue between personal, sales, and business taxes.[16]

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[15] Matthew Gardner, *et al.*, Institute on Taxation & Economic Policy, *Undocumented Immigrants' State & Local Tax Contributions* 2 (April 2015), *available at* http://www.itep.org/pdf/undocumentedtaxes2015.pdf. Moreover, providing work authorization to individuals covered under the Guidance is certain to improve worker protections, minimizing wage theft and the loss in tax revenue from wage theft.

[16] Raul Hinojosa-Ojeda, North American Integration and Development Center, UCLA, *The Economic Benefits of Expanding the Dream: DAPA and DACA Impacts on Los Angeles and California* 1 (Jan. 26, 2015), *available at*

The loss of this additional tax revenue has an immediate and significant economic cost for local governments. For example, the State of New York would receive more than $85.5 million annually in additional tax revenues if the 2012 and 2014 executive actions were fully implemented,[17] leading to an estimated $35 million in additional funds for New York City alone.[18] As a result, each day the injunction remains in place New York City loses about $100,000 in additional funds, an amount sufficient to hire two new public school teachers *every day*. And that is the harm just to New York City, only one of the over 80 signatories to this brief.

Each dollar in lost tax revenue caused by the preliminary injunction means services withheld from all residents of amici's cities and counties. On a daily basis, the injunction deprives amici's residents of funds for important municipal services

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http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/la_ca_final_draft_v2.pdf.

[17] Gardner, *supra* note 15, at 3, 17.

[18] Nelson A. Rockefeller Institute of Government, *Giving and Getting, Regional Distribution of Revenue and Spending in the New York State Budget, Fiscal Year 2009-10*, at 4-5, *available at* http://www.rockinst.org/pdf/nys_government/2011-12-Giving_and_Getting.pdf (explaining that New York City receives about 40 percent of state expenditures).

like the construction of affordable housing units, the building of new schools in overcrowded neighborhoods, and the creation and completion of innumerable other projects that would improve the lives of all residents in our cities and towns.

IV. The Court's Review Is Vital to Clarify for This and Future Cases When Plaintiffs May Have Standing to Obtain Nationwide Injunctions That Harm Residents In Other Jurisdictions

Beyond the urgent reasons explained above, there are additional compelling grounds for the Court to grant review to address, in particular, the standing questions raised in the petition (Petition at 14-18). As the petition notes, the theory of standing endorsed by the lower courts as sufficient to obtain a nationwide injunction extends well beyond the challenged guidance or even the field of immigration (Petition at 18).

Here, the only purportedly proven injury-in-fact was the expenditure of additional funds based on a state's voluntary decision to issue drivers' licenses to residents with deferred action status, and even that claimed injury was established only by one plaintiff state as grounds for enjoining the executive guidance everywhere in the nation. But there was no proof of injury on a nationwide basis. This is not, for example, a nationwide class action. Yet the preliminary injunction here burdens residents in *every* state and locality in the nation—

without the procedural protections that would apply in a class action suit or other similar standing inquiry for testing and justifying the scope of the injunction. As a result, the injunction affects millions of residents in thousands of jurisdictions across the country that never had an opportunity to demonstrate the benefits they would receive from the guidance and the harms that would arise if the guidance were enjoined.

As the dissenting circuit judge recognized (App. 103a), such an expansive view of standing threatens to halt many federal initiatives in their tracks in all areas, because it invites plaintiffs with political objectives to seek injunctions targeted at denying residents in other states and cities the benefits of federal relief provided to individual residents.

That is a formula for vast disruption, not only of the guidance in this case, but of a whole host of federal initiatives and related state and local programs as well. This Court should clarify the threshold standing requirements for obtaining nationwide injunctions to provide guidance for all affected parties.

The standing question has direct and practical consequences for local governments. *First*, local governments are often key partners for implementing federal actions because local governments are closest to the ground and are best situated to reach residents. Outreach efforts by

local governments have been key to implementing the earlier DACA initiative,[19] and many cities have invested substantial time and effort to inform residents about the guidance, and to assist residents in applying for federal relief.[20] New York City alone has invested almost $8 million to prepare legal aid providers and community groups for the implementation of the guidance.

A broad standing rule would chill these local efforts—now and in the future—to assist in the effective implementation of federal initiatives, since few local governments will invest time and effort if the federal initiative could be blocked nationwide because of a lawsuit brought by a single plaintiff anywhere in the nation.

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[19] *See* Audrey Singer, *et al.*, Metropolitan Policy Program at Brookings, *Local Insights From DACA for Implementing Future Programs for Unauthorized Immigrants* 7-8 (June 2015), *available at* http://www.brookings.edu/~/media/research/files/reports/2015/06/04-daca/bmpp_srvy_dacaimmigration_june3b.pdf (noting that the efforts of local government and community organizations were a significant factor in ensuring that a large number of people applied for DACA 2012 in the first quarter that the program was available).

[20] *See, e.g.*, Press Release, Cities United for Immigration Action, As Court Hears Argument Today on Obama's Immigration Reforms, Cities Nationwide Announce New Actions (April 15, 2015), *available at* http://citiesforaction.us/statement041715/.

Second, local governments need guidance on the standing question from this Court because, on some issues, like the denial of basic humanitarian relief to millions of our residents, local governments cannot afford to sit on the sidelines. The lower courts' standing rulings leave local governments with few options, however, if they want to meaningfully protect their residents.

The impact of federal initiatives like the guidance here is often broader than the scope of the initiatives themselves, because related state and local programs are also affected. For example, both state and local governments have voluntarily extended and tied important local benefits to deferred action status. In California, for instance, income-eligible undocumented immigrants who qualify for deferred action would be able to obtain comprehensive health service under the state's Medi-Cal program.[21] As many as 500,000 California residents could qualify for these significant health services after full implementation of the guidance.[22] The injunction in this case has damaging spillover

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[21] Laurel Lucia, *et al.*, UCLA Center for Health Policy Research, *Health Insurance and Demographics of California Immigrants Eligible for Deferred Action* (March 26, 2015), *available at* http://healthpolicy.ucla.edu/publications/search/pages/detail.aspx?PubID=1374.

[22] *Id.*

effects to health care in local California communities and counties because of the undue burden that small clinics and hospital emergency rooms in those municipalities currently shoulder. But because the preliminary injunction was issued based on Texas' claim of injury alone, there is no record of the injunction's collateral harm in California, or in the vast majority of jurisdictions where the injunction is in effect.

The standing theory endorsed by the lower courts—if left in place without this Court's review—imposes significant burdens on local governments seeking to protect their residents. To guard against the harmful local effects of enjoining federal action, including harm to local programs, local governments would be forced to intervene in lawsuits around the nation to protect their residents. Smaller localities may lack the resources to intervene to protect against expansive nationwide injunctions. Larger cities and towns might have the ability to oppose such injunctions, but would still need to divert scarce resources to ward off the threat of expansive injunctions issued without any factual record of the harms imposed on their own residents.

As the petition warns, the standing theory in this case presents an acute danger of turning policy disputes and political disagreements into nationwide injunctions that affect millions of individuals not before the court (Petition at 18). Local governments are especially vulnerable

because they will most directly experience the impact when residents are deprived of essential services, protections, and remedies because of such future injunctions. This case provides a snapshot of that harm, but the dangers extend far beyond the present controversy. For this reason, too, the Court should grant review of the petition and, in particular, the standing question that is presented.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

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